

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Comment Sought on Missoula Inter-carrier)
Compensation Reform Plan) CC Docket No. 01-92

JOINT REPLY COMMENTS OF THE
NORTH CAROLINA UTILITIES COMMISSION
AND THE
PUBLIC STAFF – NORTH CAROLINA UTILITIES COMMISSION

Dated: January 31, 2007

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The Public Staff – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Robert P. Gruber, and the North Carolina Utilities Commission (NCUC) submit these Joint Reply Comments in response to the Public Notice released by the Federal Communications Commission (Commission) on July 25, 2006, in CC Docket No. 01-92 and the subsequent order extending the due date for reply comments, released December 22, 2006. In this docket, the Commission seeks comments and reply comments from interested parties on the Missoula Inter-carrier Compensation Reform Plan (Missoula Plan or Plan), filed on July 24, 2006, by the National Association of Regulatory Utility Commissioners' Task Force.

I. Introduction

The NCUC is charged by statute with regulating the rates and terms and conditions of service furnished by public utilities in North Carolina and is expressly authorized to appear in federal regulatory proceedings such as this one "to secure for the users of public utility service in [North Carolina] just and reasonable rates and service." N.C. Gen. Stat. § 62-48(a).

The Public Staff is an independent agency charged by N.C. Gen. Stat. § 62-15 with representing the using and consuming public before the NCUC in matters affecting the rates and services of public utilities. The Public Staff is also tasked with providing technical assistance to the NCUC when requested. The Public Staff actively participates in interconnection arbitrations and disputes before the NCUC, including those involving inter-carrier compensation.

In addition, as one of its statutory responsibilities, the Public Staff investigates consumer complaints against public utilities. In this capacity, the Public Staff becomes directly involved in issues concerning the rates and charges billed by incumbent local exchange companies (ILECs) and competitive local exchange companies (CLECs). Although the NCUC no longer regulates the long distance services provided by interexchange carriers (IXCs) or commercial mobile radio services providers (CMRS providers), consumers frequently request assistance from the Public Staff with complaints and questions regarding IXCs and CMRS providers because of their close relationship with the local providers still under NCUC regulation.

II. Summary

The NCUC and the Public Staff do not believe that the Missoula Plan is in the best interests of the consumers of North Carolina. While the NCUC and the Public Staff agree that many of the issues considered in the Missoula Plan require resolution, the Plan fails to resolve these issues effectively and raises a number of additional concerns. Specifically, the initial comments filed on the Plan raised four specific areas of concern that the NCUC and the Public Staff will address in these Reply Comments. First, the NCUC and the Public Staff believe that the Plan will result in higher rates for North Carolina consumers. Second, the Plan treats the states inequitably, and North Carolina may suffer as a result. Third, the Plan appears to conflict with the Telecommunications Act of 1996 (the Act). Finally, the initial comments have shown that many disparate parties,

representing state governments, the telecommunications industry, and consumer organizations, are overwhelmingly opposed to the Plan for various reasons; no consensus among the stakeholders exists supporting it.

The Missoula Plan will burden North Carolina consumers by increasing the amount they must pay for telecommunications services. Implementation of the Plan will impose a net cost of between \$50 million and \$138 million per year on North Carolina's consumers, resulting in an average monthly increase of \$0.40 to \$1.08 per line for wireline and wireless customers.¹ These net increases will further adversely impact universal service within North Carolina.

The Missoula Plan may be inappropriate on a national basis as well. Using the supporters' assumptions, simple math shows the Plan will impose additional costs on consumers of at least \$6.9 billion to achieve a reduction in end-user rates of only \$6 billion. As commenters have already noted, however, the costs of the Missoula Plan are likely understated, and it is unlikely that all of the anticipated toll reductions will occur at all. Even if the toll reductions are implemented, they may not reflect the 100 percent flow through of access charge reductions that the Plan assumes. Thus, the \$900 million that the Missoula Plan supporters estimate that the Plan will cost is most likely understated.

The Missoula Plan will also shift revenues from intrastate to interstate jurisdiction, negatively impacting states that employ funding mechanisms utilizing intrastate revenues as the base, such as intrastate universal service programs.

¹ The revenue and cost impacts included in this filing are based upon information that is either publicly available or available through routine filings made by companies with the NCUC.

Furthermore, implementation of the Plan will create a revenue requirement imbalance for those ILECs that remain under rate of return regulation.

Finally, as discussed above, the Missoula Plan does not represent a consensus of the various stakeholders, and the NCUC and the Public Staff doubt that certain aspects of the Plan, i.e., setting intrastate rates and imposing interconnection rates, can be legally implemented by the Commission without first obtaining additional authority from Congress.

Some parts of the Missoula Plan, such as the recognition of phantom traffic and Voice over Internet Protocol (VoIP) traffic issues, certainly require the Commission's prompt attention. Resolution of these matters is critical to ensure that every originating carrier pays its fair share to terminate traffic. However, the Commission need not make the wholesale changes proposed in the Missoula Plan simply to resolve these VoIP and phantom traffic issues. The Commission should instead act to resolve these issues quickly and separately from the remainder of the Plan.

III. Consumers Will Face Overall Increases in Rates

The goal of the Missoula Plan is to resolve intercarrier compensation and access charge disparities. To do so, the Plan reduces local exchange carrier switched access charges and certain other usage fees, while still allowing ILECs "an opportunity to recover lost intercarrier compensation revenues through supplemental sources of recovery."² The NCUC and the Public Staff believe that

² Missoula Plan, Executive Summary, at 1.

the proposed reduction in access charges may not ultimately benefit consumers, while the proposed recovery of lost intercarrier revenues through supplemental sources, such as an increased Subscriber Line Charge (SLC) and Universal Service Fund increases, will actually burden consumers with higher rates. Finally, the Plan's shift of revenues from intrastate to interstate will likely result in intrastate local rate increases to recover the revenue requirement that was once recouped through intrastate access charges.

a. Pass-through Of Access Charge Reductions

The Missoula Plan purports to reduce interstate and intrastate access charges by approximately \$6 billion annually.³ This much-touted reduction of access charges, however, actually benefits consumers only if those access charge reductions are flowed through to consumers as lower prices.⁴ This predicted pass-through of access rate reductions is unlikely for several reasons. First, as mentioned by numerous commenters, the Plan imposes no requirement that IXCs must pass intrastate access charge reductions through to end-users. Hence, the NCUC and the Public Staff question whether carriers will reduce rates for a service that is now essentially a commodity offering. The rates charged for long distance service do not appear to be tied to the cost of providing the service, and with rates already as low as \$0.05 per minute or less, it seems unlikely that carriers will be inclined to reduce them further. Second, as discussed in the

³ Comments of the New York State Department of Public Service (NYDPS), *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 1, n.1 (filed Oct. 25, 2006) (Comments of the NYDPS) (citing the Plan and noting that it proposes to "significantly reduce" interstate and intrastate access charges).

⁴ See Comments of the NYDPS at 5-6 (noting that consumer benefits may be illusory because they assume a 100 percent pass-through of access rate reductions by IXCs).

comments of the NYDPS, many carriers presently offer bundled packages of services containing long distance service.⁵ Carriers are unlikely to reduce prices voluntarily for these bundled offerings in response to the reductions in access charges.

Moreover, even if the Commission were to require a pass-through, the NCUC and the Public Staff still question whether these reductions would ultimately reach the consumer. In our experience with intrastate access reductions in North Carolina, we found that carriers frequently resisted making mandated rate reductions until enforcement proceedings were initiated against them. When carriers actually filed to pass-through these reductions, further adjustments were often necessary to ensure that the access charge reductions received by carriers were indeed passed through to consumers.⁶ Accordingly, years of actual experience with pass-through toll reductions at the state level tend to indicate that the voluntary pass-through relied upon by Missoula Plan proponents is unrealistic.

b. Increases in the SLC

One of the “supplemental sources of recovery” that the Missoula Plan offers to ILECs for reduced switched access charges is an increase in the SLC cap of up to \$3.50 per month.⁷ Both state commissions and consumer

⁵ *Id.*

⁶ See Order Regarding Show Cause Proceeding, *Investigation to Consider Whether Competitive Long Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized*, NCUC Docket No. P-100, Sub 72 (rel. Feb. 2, 2002); see generally, additional NCUC orders in Docket No. P-100, Sub 72.

⁷ The Missoula Plan ultimately allows this cap to increase above that level based upon the inflation rate.

organizations have emphatically opposed these increases. In fact, the Illinois Attorney General's office characterized the proposed SLC increase as an unfair and unwarranted transfer of wealth from consumers to companies.⁸ The NCUC and the Public Staff are likewise concerned that increases in the SLC will have a significant, detrimental impact on consumers in North Carolina. These increases may compel consumers to reduce or eliminate telephone service due to the high monthly recurring costs of ownership, especially when coupled with the proposed increases to the Universal Service Fund.

If ILECs increase the SLC to the capped amount, North Carolinians will pay over \$173 million more a year in SLC charges.⁹ A more likely scenario is that ILECs will only be able to increase the SLC by approximately one-half of that, or almost \$87 million a year, due to revenue requirement caps and other factors. In either case, the consumers of North Carolina will face higher charges for telephone service and will receive no discernible benefit, resulting in additional, unnecessary pressure on those who can least afford it.

Of particular concern to the NCUC and the Public Staff is the Missoula Plan's proposal to bestow more pricing flexibility on price cap ILECs with regard to SLC rates.¹⁰ As the Texas Office of Public Utility Counsel, *et al.*, (Texas OPUC) noted in their comments, this increased flexibility will permit these ILECs to increase the SLC rates in areas not subject to competition, while enabling

⁸ Comments of Illinois on the Missoula Plan, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 1 (filed Oct. 25, 2006).

⁹ This calculation includes revenue increases from CLECs as well since they impose similar charges on their customers.

¹⁰ Commission Rule 47 C.F.R. 69.152(q) permits price cap ILECs to deaverage the SLC for up to four zones, but the ILECs must first reduce the originating and terminating CCL and Multi-line Business PICC rates in that study area to \$0.00.

them to lower SLC rates in markets where competition is stiff.¹¹ Deaveraging the SLC will appeal to those ILECs that have multi-exchange operations with customers in high-density competitive locations as well as in low-density non-competitive locations. North Carolina's largest ILECs have operations of this type. Allowing ILECs to increase the SLC in rural or high-cost areas more than the ILECs' average increase will simply add more pressure on those consumers to cut back or eliminate telephone service. In effect, the deaveraging proposal is contrary to the universal service goals of the Act.

The pricing flexibility proposed in the Missoula Plan extends beyond simply deaveraged rates. Plan proponents also propose to allow price cap ILECs to charge different rates for the SLC, using such variables as a customer's volume, as well as a customer's commitment to growth or length of service. The Plan even goes so far as to permit promotions waiving the SLC for a period of time or permitting ILECs to include SLCs in contract rates. As the Commission is well aware, the SLC is designed to recover non-traffic sensitive local loop costs assigned to the interstate jurisdiction. With adoption of these proposals, the NCUC and the Public Staff fear the SLC will become little more than a marketing tool of the ILECs to garner new customers or further commitments from existing customers, at the expense of those customers with limited competitive alternatives.

¹¹ Comments of the Texas OPUC, *et al.*, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 6-7 (filed Oct. 25, 2006) (Comments of the Texas OPUC).

c. Universal Service Fund Increases

Many consumer advocates, such as the Texas OPUC and the National Association of State Utility Consumer Advocates (NASUCA), have expressed concern over the magnitude of the federal Universal Service Fund increase contained in the Plan. Indeed, NASUCA argued that the increase to the Universal Service Fund will be almost 25 percent higher than that projected by the Plan supporters.¹² Because of concerns about the *current* size of the Universal Service Fund, the Commission has attempted to limit its growth in recent years. Therefore, neither the NCUC nor the Public Staff believes that a modification to the Universal Service Fund that would increase its funding to the extent required in the Missoula Plan is sustainable.

Also of critical importance to North Carolina is the method by which the Commission decides to recoup the revenue requirements of the Universal Service Fund. Under current rules, North Carolina contributes more than \$200 million and receives about \$132 million, making it a net contributor of over \$68 million¹³ to the Universal Service Fund. Under the method proposed by Missoula Plan supporters, North Carolina's net contribution would be lowered to just over \$30 million per year. With no change in the current contribution method, however, adoption of the other aspects of the Missoula Plan would increase North Carolina's net contribution to more than \$133 million per year. This

¹² Comments of NASUCA on the Missoula Plan, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, at 75 (filed Oct. 25, 2006).

¹³ Commission December 2006 Monitoring Report on Universal Service, revised on Jan. 25, 2007.

difference of \$103 million equates to \$0.81 per month for each wireline and wireless customer in North Carolina.

With a current funding requirement of roughly 10 percent of the available revenue base, the Universal Service Fund is already exacting a high cost on consumers, regardless of the manner in which funds are contributed. Increasing the amount that must be recovered through the Universal Service Fund, even if it does not exceed that projected by Missoula Plan supporters, will simply exacerbate that burden. The increased size of the interstate Universal Service Fund envisioned by the Plan could significantly increase the pressure on consumers to discontinue service, thereby harming the companies that serve them.

d. Revenue Shift From Intrastate To Interstate Jurisdiction

As proposed, the Missoula Plan would also drastically reduce intrastate access revenues while increasing interstate revenues primarily through the SLC. As the Illinois Commerce Commission's comments indicated, the Plan would have carriers replace their intrastate revenues with interstate rates or recovery mechanisms.¹⁴ The Plan ignores, however, the significant impacts that this shift of revenues will create on both the intrastate and the interstate jurisdictions.

A presumably unintended consequence is the effect that the change in intrastate revenues will have on funding mechanisms. The Public Utilities Commission of California has already commented upon the adverse impact to its intrastate universal service programs that will be caused by the reduction of the

¹⁴ Comments of the Illinois Commerce Commission, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 15 (filed Oct. 25, 2006).

revenues upon which their funding is based.¹⁵ The lower funding base caused by the elimination of intrastate access revenues means that California will need to impose a larger surcharge if it is to maintain existing fund levels. Any state with a fund that uses intrastate revenues as the base will be similarly adversely affected.

The effect of the Missoula Plan's revenue shift on rate of return ILECs will be a notable reduction in intrastate rates of return because the revenues used to recover intrastate revenue requirements will decline without a concurrent reduction in the intrastate revenue requirements. This shift of revenues from the intrastate to the interstate jurisdiction will most assuredly trigger rate case requests or offsetting local rate increase proposals before state commissions. These secondary costs to consumers have not been tabulated.

North Carolina has several rural ILECs that are still subject to intrastate rate of return regulation. Thus, under the existing Missoula Plan proposal, customers of these carriers could see not only increases in the SLC and interstate Universal Service Fund surcharge, but also intrastate local rate increases to recover the intrastate revenue requirement that was once recovered through intrastate access charges. On the interstate side, the shift of revenues from intrastate jurisdiction will have an impact as well. Rate of return ILECs will see their interstate rate of return rise as revenues increase with no perceptible change in expenses. Even if the Commission reduces interstate rates to offset the higher rates of return being achieved, the reductions would be applied

¹⁵ Comments of California and the California Public Utilities Commission, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 9 (filed Oct. 25, 2006).

primarily to carrier-to-carrier rates, thus leaving consumers at the mercy of carriers to pass through reductions.

IV. States That Reduced Access Rates Are Treated Unequally

To enable states to recover some of the funding that they have distributed to carriers that have already reduced their intrastate access rates through an explicit state fund, the Missoula Plan has the Commission create the Early Adopter Fund.¹⁶ Although it is unclear at this time, whether a state receives funding from the Early Adopter Fund appears to hinge on the existence of such "explicit [s]tate funding mechanisms."¹⁷ However, as the comments of Broadview Networks, *et al.* noted, in this respect the Missoula Plan effectively creates two unequal categories for states that have proactively reduced intrastate access charges.¹⁸ One category includes those states that have established an explicit state funding mechanism to assist ILECs in recovering revenue losses due to lower intrastate access charges. The other category, which appears to include North Carolina, consists of those states that have proactively reduced intrastate access charges, but have not established an explicit funding mechanism to offset these revenue reductions. In fact, several states have already expressed concerns that they would be ineligible for support from the Early Adopter Fund

¹⁶ Missoula Plan, Executive Summary, at 12.

¹⁷ Missoula Plan, at 76.

¹⁸ See Comments of Broadview Networks, *et al.* on the Missoula Plan, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 70-72 (filed Oct. 25, 2006) (Comments of Broadview Networks).

because they did not use a universal service fund approach to reform their access charges with rate rebalancing.¹⁹

Since 1996, the NCUC has required or allowed intrastate access reductions of over \$150 million, but it established no explicit fund to "recover" these revenue losses. Instead, the NCUC permitted the individual ILECs to offset intrastate access charge reductions by increasing the rates for other services, including basic local exchange service. In other instances, the NCUC allowed ILECs to reduce access charges rather than basic local rates to satisfy a revenue reduction requirement. These actions by the NCUC have resulted in BellSouth's intrastate rates, which apply to approximately one-half of the total intrastate access minutes in North Carolina, being substantially lower than BellSouth's current interstate access rates. The intrastate access rates of other companies, including two Embarq affiliates, are less than one-half of their original value.

Although the Missoula Plan is not specific, the NCUC and the Public Staff surmise that North Carolina would not qualify for Early Adopter Fund monies to offset any of these access reductions because it chose not to establish an explicit state fund. Nevertheless, despite North Carolina's intrastate access reductions, the Plan would still require North Carolina to contribute to the Early Adopter Fund to assist those states that did establish such explicit funds.

¹⁹ See Reply Comments of the Texas OPUC, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 11-12, n.43 (listing Florida, Illinois, Kansas, New Jersey, and Virginia as states that have filed comments questioning whether they would be "early adopters") (filed Jan. 10, 2007).

Moreover, the Missoula Plan fails to justify its expectation that North Carolina should shoulder some of the burden of other states that reduce their intrastate access charges through contributions to the Restructure Mechanism. The Plan does not include estimates of what North Carolina's carriers would receive from the Restructure Mechanism. Because of prior intrastate access reductions that have been made by North Carolina's ILECs, both large and small, it seems highly unlikely that North Carolina's receipts from the Restructure Mechanism will be more than a fraction of its contributions. Thus, having absorbed millions of dollars of its own access charge reductions, North Carolina now faces the prospect of helping to fund reductions in other states that have not made similar sacrifices.

There is yet a third category of states that is not mentioned by the comments of Broadview Networks: those states that have established an explicit funding mechanism to recover *only part* of the revenue losses associated with lower intrastate access charges. The Illinois Commerce Commission pointed out that it would be eligible for only approximately \$10 million since that is the size of its explicit mechanism for assisting ILECs in recovering the revenue loss associated with lower access charges. Since 1983, Illinois has taken the position that intrastate access rates should mirror interstate rates.²⁰ As a result, the intrastate access revenues for Illinois ILECs were lower than they otherwise would have been if the intrastate access rates had been priced at the rates comparable to those in effect in other states. Despite its efforts since 1983 to

²⁰ Comments of the Illinois Commerce Commission, at 3.

maintain consistency between intrastate and interstate access rates, Illinois would still be called upon to subsidize the intrastate access rebalancing efforts of other states. The specifics of North Carolina's access charge reductions and the discussion of the Illinois variation above illustrate the potential inequity of the Plan's Early Adopter Fund methodology in crediting only states that utilized only "explicit funding mechanisms."

V. The Plan Does Not Comply With Existing Law

The NCUC and the Public Staff further oppose the Missoula Plan's proposed modifications to the intercarrier access and reciprocal compensation regimes because they are inconsistent with the Act. Several parties filed comments stating that implementation of the Plan would result in inappropriate Commission usurpation of the states' authority to set intrastate access rates and reciprocal compensation rates.²¹

Both the NCUC and the Public Staff agree with Broadview Networks that Section 2(b) of the Act limits the Commission's jurisdiction over intrastate services, except where Congress has carved out exceptions, and we are unaware of any exceptions that grant the Commission authority to set the rates for intrastate access services.²² Further, in its *ISP Remand Order*²³, the

²¹ See generally Comments of the Texas OPUC; Comments of NYDPS; Comments of Broadview Networks; Comments of Qwest Communications International, Inc., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (filed Oct. 25, 2006).

²² See Comments of Broadview Networks, at 10-12 (discussing Section 2(b) of the Act's limitations on Commission jurisdiction).

²³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd. 9151, 9169 (2001) ("*ISP Remand Order*"), remanded on other grounds *sub nom. WorldCom, Inc., v. FCC*, 288 F. 3d 429 (DC Cir. 2002).

Commission clearly noted that Section 251(b)(5) traffic (reciprocal compensation traffic) does not include access services subject to the Commission's Section 201 jurisdiction or intrastate access services subject to the states' jurisdiction. Therefore, the Commission's mandating the rates that may be charged for intrastate access as proposed in the Plan is at odds with the Commission's own conclusions regarding its statutory limitations as espoused in the *ISP Remand Order*.

Commenters also highlighted the Missoula Plan's divergence from the Act where the Plan addresses the rates proposed for reciprocal compensation.²⁴ Section 252(d) of the Act requires that prices charged for interconnection and network elements be cost-based. However, the Plan mandates what can only be described as arbitrary rates that differ depending upon a carrier's tier classification. Further, its supporters have supplied no support, cost or otherwise, to justify the Plan's proposed rates.

The plain language of the Act clearly requires the use of cost-based rates for interconnection, unless the parties to an agreement concur in a different rate. If carriers cannot agree on rates, the Act provides for state commissions, based upon the standards established by the Commission, to set the specific rates for interconnection. Thus, while the Commission can set forth the manner in which interconnection rates are to be determined, the Act reserves to the states the establishment of the actual interconnection rate.

²⁴ See generally, Comments of the NYDPS; Comments of Time Warner Telecom Inc., *et al.*; Comments of the Virginia Corporation Commission Staff, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92 (filed Oct. 25, 2006).

The NCUC and the Public Staff concur with other commenters that the Commission lacks the authority to implement the Missoula Plan without additional Congressional action. The Plan would have the Commission set the rates for intrastate access, set the rates for reciprocal compensation, and establish rates for intercarrier compensation that are not cost-based. Each of these components of the Plan, in the opinions of both the NCUC and the Public Staff, exceeds the Commission's current authority.

Missoula Plan supporters, nevertheless, assert their belief that the Commission can implement the proposal under existing law.²⁵ Their apparent confidence in the Commission's authority, however, conflicts with the Executive Summary of the Plan, which notes that, should Congress decide to reform the Act, the supporters "advocate the adoption of provisions that would explicitly authorize the FCC [Commission] to implement the Plan."²⁶ Thus, even supporters of the Missoula Plan have expressed some doubt about the Commission's existing authority.

Not only does the Missoula Plan require more from the Commission than it is legally authorized to provide, the Plan reverses previous Commission policy. The Commission has long held that the state commissions are in the better position to determine what is most appropriate on the local level. The Plan rejects this prudent view, however, and puts the Commission in the position of forcing its policies onto states without regard to the circumstances within each

²⁵ See generally, The Missoula Plan: Policy and Legal Overview.

²⁶ Missoula Plan, Executive Summary, at 3.

individual state. The Plan's one-size-fits-all solution may not be able to resolve the numerous unintended consequences that could arise.

Based on the filed comments, many parties will likely look to the courts for relief should the Commission approve implementation of the Missoula Plan as proposed on July 24, 2006. The Commission can expect at best uncertainty and confusion as potentially protracted appeals work their way through the courts. If the Commission is seeking reform of intercarrier compensation that can be implemented quickly and without controversy, it should not choose the reform proposed in the Missoula Plan.

VI. The Plan Does Not Represent A Consensus

Finally, the Missoula Plan does not appear to represent a consensus among the various telecommunications providers, not to mention the state commissions and consumer groups. As evidenced by the initial comments, the proponents of the Missoula Plan are essentially limited to AT&T, BellSouth, Cingular, a few wholesale CLECs, and rural ILECs. Virtually all of the CLECs, CMRS providers, consumer organizations, and state commissions filing comments are opposed or have strong reservations regarding the overall Plan, and this opposition applies to almost all aspects of the Plan.

As discussed above, numerous commenters have objected to the Missoula Plan's proposed SLC increases, the preemption of state regulation of intrastate access rates, the setting of reciprocal compensation rates, the failure to use cost-based rates, and the failure of the Plan to meet the Commission's own

goals for intercarrier compensation reform. Other components of the Plan that have raised concerns are the inequities contained in the proposals to create the Restructure Mechanism and Early Adopter Funds.

Nevertheless, there are two aspects of the Missoula Plan about which most, if not all, of the commenters agree. That is, the Commission should address the issues of phantom traffic and VoIP usage. Indeed, the NCUC and the Public Staff note that the Commission has recently put out for comment a proposed interim process to address phantom traffic issues and a related proposal for the creation and exchange of call detail records set forth by the Missoula Plan supporters in an *ex parte* filing on November 6, 2006.²⁷

VII. VoIP And Phantom Traffic

The NCUC and the Public Staff join many of the commenters in their support of the Commission's efforts to ensure that carriers pay for terminating the calls that they originate. It is unfair and anticompetitive for carriers to mask the origin of their traffic so that compensation to terminating carriers is avoided. Both the NCUC and the Public Staff applaud the Commission for its rapid action in opening an investigation regarding this type of traffic.

The NCUC and the Public Staff further strongly encourage the Commission to develop a plan that ensures all carriers pay for terminating their traffic on other carriers' networks whether the traffic is wireless, wireline, or VoIP.

²⁷ Public Notice, *Comment Sought on the Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, CC Docket No. 01-92, DA 06-2294 (rel. Nov. 8, 2006); Industry Standard for the Creation and Exchange of Call Information (*Missoula Phantom Traffic Proposal*), attached to *Ex Parte* Letter from the Supporters to the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006).

Penalties should be a part of this plan, for without them originating carriers will have no real incentive to ensure their traffic can be properly identified. In particular, the Commission must ensure that VoIP carriers are not exempt from paying for the termination of their calls. As an increasing number of carriers offer VoIP service, this category of traffic will become a greater percentage of the overall amount of traffic. As such, the Commission should not dismiss VoIP traffic simply because of its current volume.

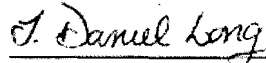
The proposals included in the Missoula Plan regarding phantom and VoIP traffic contain all the components necessary to ensure that this traffic is identified and the originating carrier pays the terminating carrier. The Plan also provides a means for enforcement should a carrier not identify its traffic. While all parties seem to agree that these issues need to be resolved, not all parties agree with the specifics proposed in the Plan. Thus, the NCUC and the Public Staff believe that the details of resolving the issues surrounding this traffic are best addressed in a separate docket, as the Commission appears to be doing.

VIII. Conclusion

The NCUC and the Public Staff request that the Commission reject the Missoula Plan as unfair and burdensome to consumers and as inconsistent with the Act.

Respectfully submitted this the 31st day of January 2007.

NORTH CAROLINA UTILITIES COMMISSION
Robert H. Bennick
Chief Counsel



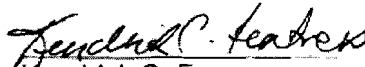
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